




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 10 2002

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Request to Finalize Revisions to CERCLA Delegation of Authority 14-21-A, Consultations, Reviews, and Selection of Remedial Actions

FROM: 
Marianne Lamont Horinko
Assistant Administrator

TO: Frederick C. Garman, Director (Mail Code 3618A)
Organization and Management Consulting Services
Office of Administration and Resources Management

Thank you for issuing an Expedited Directives Clearance Review request on December 11, 2001, to revise EPA Delegation 14-21-A. The comment period ended December 18. A comment/resolution summary is attached; we do not propose any further changes and request you finalize the delegation as proposed.

If the delegation can be finalized quickly, EPA Regional Administrators could speed up Superfund federal facility response activities, particularly at those sites where other federal agencies support the proposed remedial action.

Questions concerning CERCLA delegations of authority should be directed to Jan Baker in the Office of Emergency and Remedial Response at 703-603-8783. Questions about federal facility issues should be directed to Seth Thomas Low of my office at 202-260-8692 or Sally Dalzell of OECA at 202-564-2583.

Attachments

cc: Jan Baker, OERR 5202G
✓ Seth Thomas Low, FFRRO 5106
James Woolford, FFRRO 5106
Sally Dalzell, OECA 2261A
Loren Danforth, OSWER 5101
Sylvia Lowrance, OECA 2201A
Lisa Freedman, OGC 23665
John Michaud, OGC 2366A
Craig Hooks, FFEO 2261

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION,
AND LIABILITY ACT (CERCLA)

14-21-A. Consultations, Determinations, Reviews, and Selection of
Remedial Actions at Federal Facilities

1. **AUTHORITY.** Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA): to consult with agencies, departments, and instrumentalities regarding investigations and studies of federal facilities under section 120(e)(1); to review the plans for and results of such investigations and studies under section 120(e)(2); to select remedial actions under section 120(e)(4); and to determine under section 120(e)(6) that remedial investigations and feasibility studies or remedial action will be done properly at a federal facility by another potentially responsible party within the deadlines provided in section 120(e)(1), (2), and (3).

2. **TO WHOM DELEGATED.** Assistant Administrator for Solid Waste and Emergency Response (AA/OSWER) and Regional Administrators.

3. **LIMITATIONS.** Consultation prior to selection of a remedial action may be required by memorandum from the AA/OSWER.

4. REDELEGATION AUTHORITY

- a. The AA/OSWER may redelegate these authorities to the Director, Federal Facilities Restoration and Reuse Office, and no further.
- b. Regional Administrators may redelegate these authorities to the Branch Chief level, or equivalent, and no further.

4. ADDITIONAL REFERENCES

- a. 40 CFR Part 300, "National Oil and Hazardous Substances Pollution Contingency Plan" (NCP)
- b. CERCLA Delegation of Authority 14-2, Response.
- c. CERCLA Delegation of Authority 14-21-B, Agreements with Other Federal Agencies.
- d. CERCLA Delegation of Authority 14-40, Evaluation of Approved Remedial Design.

CURRENT DELEGATION OF AUTHORITY

DELEGATIONS MANUAL

1200 TN 349

4/15/94

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

14-21-A. Consultations, Reviews, and Selection of Remedial Actions

1. **AUTHORITY.** Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA): to consult with agencies, departments, and instrumentalities regarding investigations and studies of federal facilities conducted under section 120(e)(1); to review the plans for and results of such investigations and studies under section 120(e)(2); and to select remedial actions under section 120(e)(4).
2. **TO WHOM DELEGATED.** Assistant Administrator for Solid Waste and Emergency Response and Regional Administrators.
3. **REDELEGATION AUTHORITY.**
 - a. The authority to select remedial actions may be redelegated to the Division Director level and/or the Associate Director for the Office of Superfund Programs in Region 3, the Associate Director for the Office of Superfund and Emergency Response in Region 4, and the Associate Division Director for the Office of Superfund in Region 5, and the Director of the Federal Facilities Cleanup Office in Region 9.
 - b. All other authorities under this delegation may be redelegated to the Branch Chief level.
4. **ADDITIONAL REFERENCES.** Section 120 of CERCLA.

Proposed Revision to CERCLA Delegation 14-21A
 Originating Office: OSWER/FFRRO
 Contact: Jan H. Baker, OERR, 5201G, 703-603-8783
Comment / Resolution Details

Commenting Office/Commenter	Comment	Accepted (Y/N)	Detailed Resolution
Office of the Chief Financial Officer (Barbara Freggens)	No comments		
Office of Solid Waste & Emergency Response (Michelle Crews)	No comments		
Office of Inspector General (Maureen Fletcher)	No comments		
Region 3 - James Newsom ARA (Marilyn Fisher)	Concur no comment		
Region 9 Connie Choy Regional Directives Manager	No comments		
Region 6 Gregg Cooke, RA	No comments		
Region 8 Sonya Moore	Concur without comment		

Office of General Counsel Lisa Friedman	Concur		
	<p>Advisory comment: The wording of the limitation should be revised, from: "Consultation prior to selection of a remedial action may be required by memorandum from the AA/OSWER." To: "Prior to selecting a remedial action, Regional Administrators or their designees must consult with the AA/OSWER or his/her designee if required to do so under the terms of a memorandum from the a memorandum from the AA/OSWER."</p> <p>Rationale: limitation should specify to which of the delegates it applies. The AA/OSWER is among the delegates. The limitation should specify that it only applies to the other delegates (i.e., the Regional Administrators or those to whom they redelegate the authority).</p> <p>The limitation should also specify with whom the Regional Administrators must consult. The authority section of the delegation includes consultation with "agencies, departments, and instrumentalities," so readers may conclude that the limitation likewise refers to consultation with other federal agencies. This wording also makes room for the possibility that the OSWER memorandum might waive consultation provided certain criteria are met.</p>	N	<p>1) The use of "designees" in wording has been determined to be unnecessary by OGC & OMCS.</p> <p>2) OSWER prefers to leave limitation as "may be required" rather than changing to "must consult". This is consistent with CERCLA Delegation of Authority 14-2, Response, which says: "Regional Administrators may select a response action. Consultation prior to selection may be required by memorandum from the AA/OSWER."</p> <p>Since the limitation specifies "may be required by memorandum", any memorandum issued by the AA/OSWER would specify criteria and with whom Regional Administrators must consult.</p>